

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARSHALL SIDELL CREW,

Petitioner,

v.

JASON BENNETT,

Respondent.

CASE NO. 2:24-cv-00709

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
DISMISSING CASE

1. INTRODUCTION

This matter comes before the Court on the Report and Recommendation (R&R) of the Honorable David W. Christel, U.S. Magistrate Judge, regarding pro se Petitioner Marshall Sidell Crew's application to proceed in forma pauperis (IFP) and proposed habeas petition. Dkt. No. 6. Having closely reviewed Crew's filings, the record, and the law, the Court, for the reasons explained below, ADOPTS the R&R and DISMISSES this action WITHOUT PREJUDICE in its entirety for failure to prosecute and failure to comply with a court order.

2. BACKGROUND

Pro se Petitioner Marshall Sidell Crew is serving a sentence of confinement arising from a state-court conviction entered by the Superior Court of Washington for Snohomish County pursuant to a guilty plea. Dkt. No. 1-1 at 1; Dkt. No. 4 at 3. He began this action on May 21, 2024, by filing his application to proceed IFP and proposed habeas petition. Dkt. No. 1. His proposed habeas petition, seeking relief under 28 U.S.C. § 2241, challenges the validity of his conviction and sentence on the grounds of “unlawful seizure.” Dkt. No. 1-1. In an attached memorandum, he argues that “a 28 U.S.C. § 2241 petition is the proper means to challenge the execution of a sentence or confinement that is not the result [sic] of a criminal court’s judgment” and that “his confinement is NOT the result of a criminal court’s judgment based on Snohomish County Superior Court’s lack of jurisdiction to enter a judgment and sentence.” *Id.* at 12. He offers no reason as to why Snohomish County Superior Court lacked jurisdiction to enter judgment and sentence under his guilty plea, nor does he provide any factual support for his assertion of “unlawful seizure.” *See generally id.*

On June 14, 2024, U.S. Magistrate Judge Christel reviewed Crew’s IFP application and proposed habeas petition. Dkt. No. 4. Based on Crew’s representation that he had approximately twenty-thousand dollars (\$20,000) in a retirement savings account and Crew’s prison trust account summary indicating that he had an average spendable balance of forty dollars and forty-six cents (\$40.46) in his trust account, Judge Christel found that “it appears Petitioner has funds sufficient to pay the five-dollar (\$5.00) filing fee[.]” Dkt. No. 4 at 2. Judge

1 Christel therefore “directed [Crew] to pay the filing fee or provide the Court with an
2 explanation as to why he cannot.” *Id.*

3 Judge Christel also reviewed Crew’s proposed habeas petition under Rule 4 of
4 the Rules Governing § 2254 Cases (“Habeas Rules”). In this review, Judge Christel
5 identified two defects in Crew’s proposed habeas petition. First, while “[Crew]
6 indicates that he is seeking relief pursuant to 28 U.S.C § 2241 and uses the
7 standard form filing a § 2241 petition[,]” the law is clear that “the sole mechanism
8 by which Petitioner can challenge his state-court conviction and sentence in federal
9 court is by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.”
10 *Id.* at 2–3 (citing *White v. Lambert*, 370 F.3d 1002, 1009–10 (9th Cir. 2004) (“28
11 U.S.C. § 2254 is the exclusive vehicle for a habeas petition by a state prisoner in
12 custody pursuant to a state court judgment”)). Second, Crew’s conclusory assertion
13 of “unlawful seizure... lacks clarity and specificity” and therefore does “not [meet]
14 the requirements of Rule 2 of the Habeas Rules.” *Id.* at 3; *see* Habeas Rules, Rule
15 2(c) (requiring that petition must “specify all the grounds for relief available to the
16 petitioner” and “state the facts supporting each ground”). Judge Christel concluded
17 that “even if [Crew] pays the filing fee..., [these] deficiencies... prevent him from
18 filing a serviceable petition”; therefore, “if [Crew] wishes to proceed in this action,
19 he must also file an amended § 2254 petition using the appropriate form and
20 complying with the Habeas Rules.” *Id.*

21 Judge Christel expressly advised that failure to pay the filing fee or show
22 cause by July 15, 2024, would be deemed a failure to prosecute and would result in
23 a recommendation this action be dismissed. *Id.* at 4.

1 Crew neither paid the filing fee nor responded to the show-cause order by the
2 July 15 deadline. *See Dkt.* On this basis, on July 17, 2024, Judge Christel issued an
3 R&R recommending that this action be dismissed without prejudice for failure to
4 prosecute and failure to comply with a court order and that Crew's IFP application
5 be denied as moot. Dkt. No. 6. On July 26, 2024, Crew filed his objections to Judge
6 Christel's R&R. Dkt. No. 9. The Court addresses the objections below.

7 3. DISCUSSION

8 Crew raises nine objections to Judge Christel's R&R. The Court addresses
9 each in turn.

10 First, Crew "OBJECTS to the entire Magistrate's Report and
11 Recommendation." Dkt. No. 9 at 1. This generic objection provides no basis to doubt
12 Judge Christel's findings or recommendations.

13 Second, Crew objects that the R&R "failed to apply 28 U.S.C. §1915." *Id.* This
14 is not true. As Judge Christel explained in his Order to Show Cause, allowing a
15 litigant to proceed IFP under Section 1915 "is a matter within the sound discretion
16 of the trial court in civil actions." Dkt. No. 4 at 1–2 (citing *Weller v. Dickson*, 314
17 F.2d 598, 600 (9th Cir. 1963)). Finding that Crew appeared to have the capacity to
18 pay the five-dollar (\$5.00) filing fee, Judge Christel instructed Crew to either pay it
19 or explain why he could not. Crew failed to comply with either option.

20 Third, Crew objects that the R&R "failed to address Petitioner's Request for
21 Certification in the 28 U.S.C. §2241." Dkt. No. 9 at 1. This objection seems to refer
22 to Crew's Proposed Request for Certification attached to his proposed habeas
23 petition. Dkt. No. 1-2. There, Crew requests that the Court certify the following

1 question for review by the Washington Supreme Court: “Does the proper
2 designation of judicial officers in Article III preclude a superior court from imposing
3 a criminal sentence without a district court arrest warrant?” *Id.* This question—
4 which is muddled and unclear and appears to pertain to federal, not state, law—is,
5 in any case, irrelevant to the most pressing issue preventing Crew’s proposed
6 petition from moving forward—his failure to pay the filing fee or otherwise respond
7 to the show-cause order. As such, the Court does not find that “it is necessary to
8 ascertain the local law of this state” as it relates to Crew’s proposed question for
9 certification “in order to dispose of [this] proceeding.” *See* RCW 2.60.020.

10 Fourth, Crew objects that the R&R “failed to address Petitioner’s Affidavit in
11 Support of 28 U.S.C. §2241.” Dkt. No. 9 at 1. But the affidavit to which this
12 objection refers merely confirms that Crew was arrested in May 2021, convicted in
13 Snohomish County Superior Court, and sentenced in February 2022. Dkt. No. 1-1 at
14 13–14. Nothing in the affidavit calls Judge Christel’s findings or recommendations
15 into question.

16 Fifth, Crew objects that the R&R “failed to take Judicial Notice pursuant to
17 mandatory provision of section (b) nor was Petitioner allowed to be heard pursuant
18 to section (e).” Dkt. No. 9 at 2. This objection appears to refer to Crew’s various
19 requests for “judicial notice” contained in attachments to his proposed habeas
20 petition, none of which are procedurally or substantively appropriate. This objection
21 lacks merit.

22 Sixth, Crew objects that the R&R “failed to order the respondent to produce a
23 certified copy of the Arrest Warrant, which is necessary for claimed adjudication.”

1 Dkt. No. 9 at 2. In support of this objection, Crew cites *Brady v. Maryland*, 373 U.S.
2 83 (1963). But *Brady* gives defendants a right to receive exculpatory evidence from
3 the prosecution in criminal cases. *See id.* Its relevance to Crew's proposed habeas
4 petition is entirely unclear. If Crew wishes to allege that his underlying conviction
5 was obtained in violation of *Brady*, then his habeas petition would need to make
6 this clear. Yet Crew never complied with Judge Christel's instruction to submit an
7 amended habeas petition specifying the factual grounds for relief.

8 Seventh, Crew objects that the R&R "failed to consider whether or not an
9 evidentiary hearing would benefit a merits resolution, or Petitioner's right to
10 contest factual disputes and expand the record." Dkt. No. 9 at 2. This objection fails
11 to address the main bases of Judge Christel's recommendations: Crew's failure to
12 pay the filing fee and to submit a proper, amended habeas petition. Nothing before
13 the Court suggests that an evidentiary hearing or expanded record is procedurally
14 appropriate or would absolve these failures.

15 Eighth, Crew objects that the R&R "asserts a Procedural Defense without
16 any party asserting the defense[.]" Dkt. No. 9 at 2. This is not true. Judge Christel's
17 recommendation to dismiss for failure to prosecute is based not on any defense but
18 on the Court's duty to manage its own docket and to administer the IFP system in
19 accordance with sound principles of law and equity.

20 Ninth, Crew objects that the R&R "recharacterizes the Petitioner from a 28
21 U.S.C. §2241 to a 28 U.S.C. §2254." Dkt. No. 9 at 2. Again, this is not true. The R&R
22 does not recharacterize Crew's proposed petition. To the contrary, it recommends
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1 dismissal based in part on *Crew's* failure to file the proper petition under §2254.
2 That failure persists.

3 In sum, none of Crew's objections to the R&R have merit. Crew has still not
4 complied with the court order to either pay the filing fee or show cause as to why he
5 cannot. Accordingly, the Court ADOPTS the R&R in full, Dkt. No. 6, and
6 DISMISSES this case without prejudice for failure to prosecute and to follow a court
7 order. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1065 (9th Cir. 2004) ("The
8 failure of the plaintiff eventually to respond to the court's ultimatum ... is properly
9 met with the sanction of a Rule 41(b) dismissal.").

10 4. CONCLUSION

11 The Court FINDS that Crew's objections to the R&R lack merit. Pro se
12 Petitioner Marshall Sidell Crew has failed to prosecute this action and has failed to
13 comply with a court order. As such, the Court APPROVES and ADOPTS the R&R in
14 full, Dkt. No. 6; DISMISSES this case without prejudice; and DENIES Crew's IFP
15 application as moot, Dkt. No. 1.

16 It is so ORDERED.

17 Dated this 31st day of March, 2025.

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19 Jamal N. Whitehead
20 United States District Judge
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